THE HON'BLE SRI JUSTICE B. PRAKASH RAO

AND

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

WRIT PETITION No.719 OF 2000

27th July 2006

Between:

Y. Rajasekhar reddy, S/o Y. ChandrasekharReddy.

.. Petitioner.

And

The Director General, Ordnance Factory Board,
10A, Auckland Road,
Calcutta – 700 001 and another.

.. Respondents.

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AND

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

WRIT PETITION No.719 OF 2000

ORDER: (Per Hon'ble Sri Justice B. Prakash Rao)

The petitioner herein, who has been working as Chargeman Grade-II with the respondents herein, filed this Writ Petition, *inter alia,* seeking to assail the order dated 12.07.1999 in O.A. No.1389 of 1997 on the file of the Central Administrative Tribunal at Hyderabad and in turn to set aside the proceedings dated 30.11.1993 and 6.2.1995 imposing punishment in a disciplinary enquiry and also to restore the seniority and grant all the incidental benefits.

The facts, which are necessary for disposal of this case, are that the petitioner was initially appointed as Supervisor, Technical on 21.05.1986 by the second respondent, which is equivalent to that of Chargeman Grade-II in regard to scale of pay. Later on, the said post was merged in the Chargeman Grade-II and in pursuance of the proceedings dated 11.11.1992, he was placed at serial No.73. In the meanwhile, the petitioner was suspended on 17.04.1993 and a charge memo was issued on 27.04.1993. In view of the same, the petitioner

was not granted the benefit of transfer as Chargeman Grade-II. A report was submitted by the Enquiry Officer on 29.09.1993. .According to the petitioner, the enquiry was conducted without notice and opportunity to him. Basing on the said report and after passing or the order by the disciplinary authority dated 30.11.1993, the authorities have imposed a penalty of withholding one increment for one year without cumulative effect and the suspension of the petitioner was revoked with effect from 07.12.1993. On 15.01.1994, the second respondent issued a show-cause notice to the petitioner seeking explanation as to why he should be allowed only such pay and allowances as admitted to him during the period of suspension and the said period was not treated as 'period suspension duty.' The petitioner submitted his explanation. However, as per the orders dated 05.04.1994, the respondents treated the period of suspension as *dies-non*. The petitioner unsuccessfully challenged these proceedings in appeal and earlier the petitioner has also filed O.A.No.1298 of 1994 challenging the initial action. Since during the pendency of that O.A., final orders were passed in appeal. The said O.A. could not be taken up and ultimately the appeal was dismissed on 06.02.1995, which is received by the petitioner on 06.08.1997. Hence, the petitioner filed application in O.A.No.1389 of 1997 challenging these proceedings on various grounds including to

the effect that there is absolutely no basis or any evidence or material in support of the charges, which are framed against him nor there is any charge framed or any enquiry conducted on the ultimate finding given against him. However, the Tribunal did not find favour with any of these and other points raised on behalf of the petitioner on merits except to the extent of granting relief treating the period of suspension from 17.04.1993 to 07.12.1993 as on duty instead of as *dies-non*. However, the order imposing penalty being only that of minor one, it was not interfered with. The net result of the orders of the Tribunal is to the effect that the only order dated 05.04.1994 is set aside. Hence, this Writ Petition.

The main submission made on behalf of the petitioner by the learned counsel Sri Pratap Narayan Sanghi is to the effect that having regard to the nature of charges laid against the petitioner and the purport of the allegations as contained therein, there is neither any basis, nor any evidence and material much less a finding. The finding against which the petitioner was holding responsible and guilty for which the penalty was imposed is totally a different one and for which, neither there was any charge nor any enquiry much less any sort of opportunity was given to the petitioner. Hence, the entire impugned action is liable to be set aside.

Sri Andapali Sanjeev Kumar, the learned Standing Counsel

appearing on behalf of the respondents sought to sustain the impugned action on the ground that even in regard to the possession of article with the petitioner inside the premises, there is no proper explanation forthcoming and the penalty imposed being only a minor which is totally commensurate to the gravity of the allegation attributed. Hence, neither the initial action taken by the competent authority nor the orders of the Tribunal are liable to be set aside.

Taking into consideration the rival submissions as made across the Bar from both the sides and on perusal of the material available on record, the point which arises for consideration is as to whether, on the facts and circumstances, the impugned action of imposing the penalty though a minor one is liable to be set aside ?

There is no dispute in regard to the chequered events, which ultimately led to filing of the proceedings before the Tribunal as well as this Court in this Writ Petition. At the relevant point of time, the petitioner was working as Supervisor, Technical, the said post was merged in the Chargeman Grade-II. The complaint of the petitioner is against the non-granting of the benefit of transfer as Chargeman Grade –II even-though no proceedings were pending against him as on the date of DPC. The contents of the charge memo which was served on him on 27.04.1993 read follows:

1. Attempted theft of Government material
2. Failure to maintain absolute integrity
3. Conduct unbecoming of a Government servant

However, the case of the petitioner is to the effect that the said article involved, in fact, belongs to him but not to the respondents. Ultimately in the enquiry, the proceedings virtually took a different turn since it was found that the article does not belong to the respondents and that the petitioner ought not to have brought any such article belonging to him without declaring the same at the entry point. Thereupon, the Enquiry Officer proceeded on the ground that there is lacuna in the security procedure and though no pecuniary gain can be achieved by the petitioner but possessing un-declared property would amount to theft of Government material whether it was un-intentional or intentional and held that the petitioner was guilty of the aforesaid three charges. These findings ultimately stood confirmed in the impugned orders

in-house appeal and also by the Tribunal. A plea was raised specifically that there being no such complaint of what-so-ever nature in regard to the loss of any material including the one involved double end ring spanner, which was found in his possession, was a private property, mere non-declaration would not amount to theft nor would give parameters of the charge against him. However, the Tribunal

found that the punishment imposed by the disciplinary authority was based on the material available on record and is a justified one. Now, an attempt is made on behalf of the respondents herein to show that though the charge was of a theft, but ultimately turned to that it was possession of an un-declared property though belonging to him, which is also in violation of the Rules and the Regulations concerned applicable and more so having regard to the very minor penalty imposed, no interference is warranted. However, the fact remains that even on a bare reading of the aforesaid charges as initially framed and on the face of which the entire enquiry was conducted even taking recourse to the suspension of the petitioner on such allegations, there is no material nor any pointer in respect of any property or material pertaining to the respondent. There is no dispute at any stage of the proceedings including in this Court to the fact that the said spanner belongs to the petitioner but not to that of the respondents herein. The end result of the events is only a lapse on the part of the petitioner in not declaring the said article at the entry point and possessing the same inside the premises. On a reading of the entire proceedings including the charge-sheet and the disciplinary action taken, there is absolutely no whisper nor any point is raised specifically against the petitioner in respect of such allegation that he was possessing an un-declared property and therefore, why action should not be taken nor

there was any charge at any point of time framed against the petitioner and thus, there was no enquiry at all on such charge framed. It is a clear case where there is total variance in regard to the initial charges and the ultimate conclusions arrived at by the Enquiry Officer. There is no finding that there was theft of any Government material nor any finding on the consequent two charges which have been framed initially about the absolute integrity or conduct unbecoming of a Government servant. Even on the finding as arrived at possessing the un-declared property, nothing as such can be attributed against the petitioner that any malice or cast any shadow either on the integrity or conduct of the petitioner. No-doubt, the petitioner ought to have declared the same at the entry point about any such article possessed by him. But mere possession of such article though is not supposed to do as per the Rules, however, as long as it has no nexus to any use or mis-use to the detriment or interest of the respondents-Management and ultimately resulting loss or damage to the respondents, it cannot be said that there is either any theft or theft with any intention that would reflect on the character. Therefore, *prima facie,* we are of the view that the petitioner has been mulcted against a finding or allegation for which neither there was any charge nor any enquiry or there was any sort of opportunity to the petitioner to rebut in the

manner known to law.

In **M.V. BIJLANI vs. UNION OF INDIA**[1], considering almost in similar circumstances where there was variance in regard to the charge and ultimate finding, it was held that :

> "From a perusal of the enquiry report, it appears to us that the disciplinary authorities proceeded on a wrong premise. The appellant was principally charged for non-maintenance of ACE-8 Register. He was not charged for theft or misappropriation of 4000 kg of telegraph copper wire or misutilisation thereof. If he was to be proceeded against for misutilisation or misappropriation of the said amount of copper wire, it was necessary for the disciplinary authority to frame appropriate charges in that behalf. Charges were said to have been framed after receipt of a report from CBI (Anti-Corruption Bureau). It was, therefore, expected that definite charges of misutilisation/misappropriation of copper wire by the appellant would have been framed. The appellant, therefore, should have been charged for defalcation or misutilisation of the stores he had handled if he was to be departmentally proceeded against on that basis. The second charge shows that he had merely failed to supervise the working of the line. There was no charge that he failed to account for the copper wire over which he had physical control.
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> It is true that the jurisdiction of the court in judicial review is limited. Disciplinary proceedings, however, being quasi-criminal in nature, there should be some evidence to prove the charge. Although the charges in a departmental proceeding are not required to be proved like a criminal trial i.e., beyond all reasonable doubt, we cannot lose sight of the fact that the enquiry officer performs a quasi-judicial function, who upon analyzing the documents must arrive at a conclusion that there had been a preponderance of probability to prove the charges on the basis of materials on record. While doing so, he cannot take into consideration any irrelevant fact. He cannot refuse to consider the relevant facts. He cannot shift the burden of proof. He cannot reject the relevant testimony of the witnesses only on the basis of surmises and conjectures. He cannot enquire into the allegations with which the delinquent officer had not been charged with.
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> The report of the enquiry officer suffers from the aforementioned vices. The orders of the disciplinary authority as also the Appellate Authority which are based on the said enquiry report, thus, cannot be sustained. We have also noticed the way in which the Tribunal has dealt with the matter. Upon its findings, the High Court also commented that it had not develd deep into the contentions raised by the appellant. The Tribunal also, thus, failed to discharge its functions property."

Having regard to the aforesaid principles in support, we are no

other option but to hold that the entire proceedings since inception and culminating into the imposition of punishment be it a minor or otherwise under the impugned orders dated 13.11.1993 and also 06.02.1995 are totally bad and consequently liable to be set aside. Further, since these aspects were not considered in proper perspective by the Tribunal, the order of the Tribunal dated 12.07.1999 is also liable to be set aside.

The Writ Petition is, accordingly, allowed and the O.A.No.1389 of 1997 stands allowed and the impugned orders dated 13.11.1993 and 06.02.1995 are set aside. No costs.

B. PRAKASH RAO, J

RAMESH RANGANATHAN, J

27th July, 2006.

Chvn.

[1] (2006) 5 Supreme Court Cases 88